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April 23, 2006

Hon. James Orenstein
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

**re: Pizzitola v. City of New York Fire Department
Case No.: 04-cv-04801**

Dear Magistrate Orenstein:

This letter is submitted on behalf of the Plaintiff in this action, Marianne Pizzitola (hereinafter “Pizzitola”) and concerns the failure of a duly served third party, Diane Bodoni (hereinafter “Bodoni”) to comply with a deposition subpoena. A copy of the subpoena and the affidavit reflecting service are attached hereto as Exhibits A and B, respectively.

Although the subpoena was served in hand on March 08, 2006 directing her to appear at my offices at 1225 Franklin Avenue - Suite 400, Garden City, NY 11530 on March 20, 2006 at 10:00 a.m., Bodoni failed to appear, object to appearing or contact me or my office in any manner.

To date, Bodoni has not responded to the subpoena or any subsequent attempts by the undersigned to contact her. Because Bodoni failed to object to the subpoena within fourteen (14) days of its service, as is required by Federal Rule of Civil Procedure 45(c)(2)(B), she has waived any and all objections she may have had to the subpoena. See In re Sumar, 123 F.R.D. 467472 (S.D.N.Y. 1988)(“failure to object timely constitutes a waiver of any objections”); United States v. International Bus. Machs. Corp., 70 R.F.D. 700, 701-02 (S.D.N.Y. 1976); 9 James Wm. Moore et al., Moore’s Federal Practice § 45.04[2](3d ed. 1997).

Accordingly, Pizzitola requests that this Court enter an Order compelling Bodoni to contact Plaintiff’s counsel within ten (10) days to schedule her deposition, and show cause why she should not be required to pay Pizzitola’s attorney’s fees for having to make this request in the amount of \$500.00.

Thank you for your courtesy in this matter.

Respectfully submitted,

Matthew J. Conroy

Cc: Phyllis Calistro, Corporation Counsel